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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/662,407	09/16/2003	Jan-Erik Ekberg	4208-4114US1	9670
27123	7590	02/09/2009		
MORGAN & FINNEGAN, L.L.P. 3 WORLD FINANCIAL CENTER NEW YORK, NY 10281-2101				
EXAMINER				
HO, HUY C				
ART UNIT		PAPER NUMBER		
2617				
NOTIFICATION DATE		DELIVERY MODE		
02/09/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTOPatentCommunications@Morganfinnegan.com

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Office Action Summary

Application No.

10/662,407

Applicant(s)

EKBERG ET AL.

Examiner

HUY C. HO

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10/22/2008.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-53 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☒ Claim(s) 1-36 and 45-53 is/are allowed.
6) ☒ Claim(s) 37-44 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 09/16/2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/S508)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/22/2008 has been entered.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thornton*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

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Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claim 1 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 45 of copending Application No. 10/662,470. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 1 of the current application is anticipated by claim 45 of copending application. Claim 45 of copending application is narrower and requires bit codes in the inquiry response, and if the inquiry response does not include indication of a middleware layer, disregarding the inquiry response.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 37-44 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Particularly, claims 37-44 recite "A computer program product executable in a computer system". It appears that the computer product at least includes a program executable in a computer system and a computer readable medium. Therefore it is not clear how the computer program product comprising a computer readable medium could be "executable" in a computer system since the product does not appear just to be a program per se. In examiner's opinion:

"A computer program product comprising a computer readable medium storing a program code executable in a computer system, said program code comprising:

program code for conducting ...

program code for determining ... etc.,"

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would be a better choice of wording for claims 37-44.

Appropriate correction is required.

Allowable Subject Matter

6. Claims 1-36, 45-53 are allowed.

7. The following is an examiner's statement of reasons for allowance:

The prior art of record, i.e., Kammer et al (ISBN: 1-928994-42-3, "Bluetooth Application Developer's Guide"), Beck et al. (US 6,604,140) and Howe (US 2005/0058149), in combination, neither teach nor suggest the claimed invention unique features, i.e., a method for performing device detection and service discovery in a mobile ad hoc communications network, comprising: conducting an inquiry to discover at nearby devices, determining, whether a discovered nearby device provides an indication that it may include a middleware software, the middleware software configured for providing application and service discovery; when the discovered nearby device does not provide an indication that it may include the middleware software, then disconnect communication session establishment with the discovered nearby device; when the discovered nearby device provides an inquiry request result includes an indication that it may include the middleware layer software, creating a wireless short-range communication connection to discovered nearby device; confirming whether said nearby device includes the middleware software by requesting corresponding information from said nearby device via the wireless short-range communication connection and when said at nearby device includes the middleware software, executing the middleware software to perform application and service discovery with said nearby device, because Kammer, Beck and Howe alone or in combination, neither teach nor suggest method or system in an ad hoc network that conducts an inquiry to discover a nearby device which provides an indication of a middleware software (which provides application and service discovery), when the nearby device does not provide an indication of including the middleware software, then disconnect communication session with the nearby device,

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but when the nearby device provides an inquiry request result including an indication that it includes a middle ware software, then creating a wireless short range communication to the nearby device.

Therefore, claims 1-36, 45-53 are deemed allowed.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HUY C. HO whose telephone number is (571)270-1108. The examiner can normally be reached on Monday - Friday, 8:00 a.m. - 5:00 p.m., EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alex V. Eisen can be reached on 571-272-7687. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Huy C Ho/

Examiner, Art Unit 2617

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/Alexander Eisen/

Supervisory Patent Examiner, Art Unit 2617